

**MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
SEPTEMBER 14, 2006**

The Lake County Board of Adjustment met Thursday, September 14, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Howard (Bob) Fox, Jr.
Darren Eslinger
Henry Wolsmann, Vice Chairman
Ruth Gray
Mary Link Bennett
Donald Schreiner, Chairman
Carl Ludecke

Staff Present:

Terrie Diesbourg, Director, Customer Services Division
Anita Greiner, Senior Planner, Customer Services Division
Paul Simmons, Planner, Customer Services Division
Karen Chester, Associate Planner, Customer Services Division
Anna Ely, Public Hearing Coordinator, Customer Services Division
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division
Kimberly Williams, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed Proof of Publication for each case as shown on the monitor.

TABLE OF CONTENTS

<u>CASE NO.</u>	<u>OWNER/ APPLICANT</u>	<u>AGENDA NO.</u>
Consideration of Minutes	August 10, 2006	
Changes in Agenda		
Postponements:		
BOA#99-06-5	Seburn R. and Sharon M. Woods/ John Fennessy	2
BOA#100-06-2	Robert J. and Marcia R. Hamilton/Shane R. Hamilton	3
BOA#101-06-1	Benjamin and Janet Crunk	4
BOA#107-06-2	Sunderman Groves, Inc./Jendall Koehne and Alison Mullany	10
BOA#108-06-4	John and Mary Ann Beatty/John Beatty	11
BOA#113-06-5	Steve S. Frazier/Cy Holley	16
Withdrawals:		
BOA#105-06-3	Betty W. Ingerman/Christina Brianac	8
BOA#109-06-5	Ronald Depner and John Waters	12
BOA#112-06-5	Daniel E. and Marianne McGrath/Bonnie Roof	15
Discussion of Consent Agenda		
Consent Agenda Approval:		
BOA#92-06-5	James W. and Karen A. Tyla	1
BOA#102-06-2	Deborah Rutherford Mullins	5
BOA#103-06-3	Ronnie and Candice Hobgood	6
BOA#104-06-3	Lakeram and Deowayani Arjune	7
BOA#111-06-5	Ursula A. and David A. Westervelt/Steven J. Richey, P.A.	14
BOA#115-06-5	Ursula A. and David A. Westervelt/Steven J. Richey, P.A.	18
BOA#116-06-1	Hart Construction and Development, Inc./Hal Murphy	19
Regular Agenda:		
BOA#106-06-2	Allison Parsons Lehn	9
BOA#110-06-4	Timothy and Debra Gary	13
BOA#114-06-5	Jay Johnson III	17
Discussion	BOA#60-06-3 BOA#116-06-1	
Introductions	Paul Simmons Karen Chester	
Adjournment	2:40	

Minutes

MOTION by Henry Wolsmann, SECONDED by Mary Link Bennett to approve the August 10, 2006 Board of Adjustment Public Hearing minutes, as submitted.

FOR: Fox, Jr., Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

NOT PRESENT: Eslinger

MOTION CARRIED: 6-0

Changes in Agenda

In addition to the postponements listed in the agenda (BOA#107-06-2 and BOA#108-06-4), Anita Greiner, Senior Planner, said the following cases are also being requested for postponement: BOA#99-06-5, BOA#100-06-2, BOA#101-06-1, and BOA#113-06-5.

Darren Eslinger came into the meeting.

BOARD OF ADJUSTMENT**SEPTEMBER 14, 2006**

CASE NO.:	BOA#99-06-5	AGENDA NO.:	2
OWNERS:	Seburn R. and Sharon M. Woods		
APPLICANT:	John Fennessy		
CASE NO.:	BOA#100-06-2	AGENDA NO.:	3
OWNERS:	Robert J. and Marcia R. Hamilton		
APPLICANT:	Shane R. Hamilton		
CASE NO.:	BOA#101-06-1	AGENDA NO.:	4
OWNERS/APPLICANTS:	Benjamin and Janet Crunk		
CASE NO.:	BOA#107-06-2	AGENDA NO.:	10
OWNER:	Sunderman Groves, Inc.		
APPLICANTS:	Jendall Koehne and Alison Mullany		
CASE NO.:	BOA#108-06-4	AGENDA NO.:	11
OWNERS:	John and Mary Ann Beatty		
APPLICANT:	John Beatty		
CASE NO.:	BOA#113-06-5	AGENDA NO.:	16
OWNER:	Steve S. Frazier		
APPLICANT:	Cy Holley		

There was no one in the audience who had an objection to any of these postponement requests.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to postpone the above cases until the October 12, 2006 Board of Adjustment public hearing.

FOR: Fox, Jr., Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.:	BOA#105-06-3	AGENDA NO.:	8
OWNER:	Betty W. Ingerman		
APPLICANT:	Christina Brianac		

CASE NO.:	BOA#109-06-5	AGENDA NO.:	12
OWNERS/APPLICANTS:	Ronald Depner and John Waters		

CASE NO.:	BOA#112-06-5	AGENDA NO.:	15
OWNERS:	Daniel E. and Marianne McGrath		
APPLICANT:	Bonnie Roof		

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to accept the withdrawals of the above cases.

In response to Ruth Gray, Anita Greiner, Senior Planner, stated that some monies may be refunded due to the withdrawal of these cases.

FOR: Fox, Jr., Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

Chairman Schneider stated that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter.

Discussion of Consent Agenda

Chairman Schreiner explained the procedure for hearing the cases on the consent agenda.

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#92-06-5, BOA#102-06-2, BOA#103-06-3, BOA#104-06-3, BOA#111-06-5, BOA#115-06-5 and BOA#116-06-1.

CASE NO.:	BOA#92-06-5	AGENDA NO.:	1
OWNERS/APPLICANTS:	James W. and Karen A. Tyla		
CASE NO.:	BOA#102-06-2	AGENDA NO.:	5
OWNER/APPLICANT:	Deborah Rutherford Mullins		
CASE NO.:	BOA#103-06-3	AGENDA NO.:	6
OWNERS/APPLICANTS:	Ronnie and Candice Hobgood		
CASE NO.:	BOA#104-06-3	AGENDA NO.:	7
OWNERS/APPLICANTS:	Lakeram and Deowayani Arjune		
CASE NO.:	BOA#111-06-5	AGENDA NO.:	14
OWNERS:	Ursula A. and David A. Westervelt/		
APPLICANT:	Steven J. Richey, P.A.		
CASE NO.:	BOA#115-06-5	AGENDA NO.:	18
OWNERS:	Ursula A. and David A. Westervelt/		
APPLICANT:	Steven J. Richey, P.A.		
CASE NO.:	BOA#116-06-1	AGENDA NO.:	19
OWNER:	Hart Construction and Development, Inc.		
	Hal Murphy		

MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to take the following actions on the above consent agenda:

BOA#92-06-5	Approval with conditions
BOA#102-06-2	Approval
BOA#103-06-3	Approval with conditions
BOA#104-06-3	Approval with conditions
BOA#111-06-5	Approval with conditions
BOA#115-06-5	Approval with conditions
BOA#116-06-1	Approval

FOR: Fox, Jr., Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

Chairman Schreiner explained the procedure for hearing cases on the regular agenda, stating that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case.

CASE NO.:

BOA#106-06-2

AGENDA NO.:

9

OWNER/APPLICANT:

Allison Parsons Lehnen

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor. She noted that this property is located in the Green Swamp Area of Critical State Concern.

In response to Carl Ludecke, Ms. Greiner said she did not believe the owner/applicant wants to build on the parcel. When Ms. Greiner visited the property, there was a "For Sale" sign on it as shown in the photograph in the backup information. When she spoke to one of the owners, Ms. Greiner said she was told that the parcel is for sale.

Allison Lehnen was present to represent the case. When Mr. Ludecke asked Ms. Lehnen why she did not build on the parcel, she said they were under the impression that this property is zoned Agriculture. They did not know that all this had happened until they decided to sell the property and were in the process of closing the sale. When she tried to get a copy of the denial letter sent to her by the Property Appraiser's office regarding the agricultural exemption, that office could not provide the denial letter that was sent, the address to which it was sent, or a return receipt confirming that she had received the letter. When Mr. Ludecke asked if Ms. Lehnen was involved in obtaining this family density exception, Ms. Lehnen said that originally it was her parents who had done the lot split.

Thomas Hage, Sr. said that in 2001 they applied for a family density exemption. When they received the paperwork, it said they had to build three houses within a year or obtain an agricultural exemption. The fee was returned to them when they withdrew the original application for the family density exemption because they knew they would not be able to build three houses within one year as their children were not ready to build. He was told by Zoning that if they had an agricultural exemption, they did not have to build within one year. He called Ed Havill and spoke to him personally. Mr. Havill guided him through what he needed to do. He planted 6,000 pine trees. They were never notified that the agricultural exemption was denied. On the tax roll, Ms. Lehnen owns this parcel and has been paying taxes on it since 2001. However, on the "Zoning rolls," there are only two parcels. It is his opinion that somehow someone in Lake County has "dropped the ball." They did everything they were told to do. They thought this parcel was a buildable lot until they tried to sell it. Ms. Lehnen needs the money to survive.

At the request of Mr. Ludecke, Ms. Greiner explained that a family lot split was granted in 2000 and recorded in 2001. When she checked with the Property Appraiser's office, she was told the property did not receive an agricultural exemption. When Darren Eslinger asked the requirements for an agricultural exemption, Mr. Ludecke said a bona fide agricultural pursuit is needed. In this case, 6,000 pine trees were planted in order to qualify for the agricultural exemption. Mr. Eslinger questioned whether Mr. Hage made a good faith effort to fulfill the agricultural exemption requirements. Mr. Hage felt he did as he cleared and burned the orange grove stumps, bought the pine trees, and paid someone to plant the trees for him. He then applied for an agricultural exemption but never heard from them. He added that the County asked and he deeded 33 feet of the property for a road before they could do anything. He said that originally there were two lots, Lots 11 and 12. They had to first combine those two lots into one and then make three lots out of that one lot. When Ms. Greiner said the tax bill for the subject parcel does not show an agricultural exemption, Ms. Lehnen said she did not know that the tax bill should show that. When her tax bill last year was only \$300, she thought she had the agricultural exemption. Ms. Greiner submitted a copy of the property record card showing no exemptions as County Exhibit A. When Mr. Eslinger said he would be willing to postpone this case in order to learn why this agricultural exemption was denied, Ms. Lehnen said she had tried to find that out three days ago; and the staff at the Property Appraiser's office could not answer that question. She was told that the office did not have records that far back. When Mr. Eslinger suggested applying for the agricultural exemption again, Ms. Lehnen said she did not think it would qualify anymore. Mr. Hage said it is not a lot anymore. Parcels A and B have been rejoined. Ms. Greiner said the Property Appraiser's office has this parcel as a separate tax ID. Kimberly Williams, Assistant County Attorney, said that Zoning does not. Ms. Greiner said the agricultural exemption may have been denied because of the parcel's size. Mr. Hage said they were told when they did the family density exemp-

CASE NO.:	BOA#106-06-2	AGENDA NO.:	9
OWNER/APPLICANT:	Allison Parsons Lehen	PAGE NO.:	2

tion that if they “did the 12 acres the way they were supposed to,” the agricultural exemption would be no problem even though the lot does not qualify in size. They were granted an agricultural exemption based on 12 acres and planting 6,000 pine trees. He said he could bring in the original copy of the application. At the request of Mr. Hage, Ms. Greiner showed and submitted Exhibit C of the deed restrictions as County Exhibit B. These deed restrictions were signed by Mr. Hage and were notarized into the public records. Mr. Eslinger was informed by Mr. Hage that the trees were planted in 2001 or 2002.

In response to Mr. Eslinger, Ms. Greiner said this subject lot could be combined with Parcel B where Mr. Hage has built his house or it could just sit there and be unbuildable because this lot cannot be created in Rural Conservation, which requires ten acres. A family density exception could be applied for again and a house built on the parcel or an agricultural exemption kept on the property for five years. When Mr. Hage asked if five acres could be split off his Parcel B, Ms. Greiner said that could not be done as Rural Conservation requires each parcel to be ten acres.

Ruth Gray was informed by Ms. Greiner that each of the three parcels is about four acres. When Ms. Gray asked why another family density exemption could not be granted, Ms. Greiner said Ms. Lehen wants to sell the property. With a family density exemption, Ms. Lehen must build a house and obtain a Certificate of Occupancy within a year or keep an agricultural exemption on the property for five years.

Regarding the requirements for an agricultural exemption, Ms. Williams said the statute for the agricultural exemption lists a variety of factors. Size is one of those factors, but it is not the only factor.

When Mary Link Bennett asked Mr. Hage if he had met with Mr. Havill since the trees were planted, Mr. Hage said he had spoken with staff at the Property Appraiser’s office. Ms. Lehen said she had taken the agricultural exemption application into the office personally. She felt that if the exemption was denied, a letter should have been sent registered; but that was not done. Mr. Hage stated that once the trees are planted, they must be inspected to ensure an 80 percent survival rate. Whoever inspected their property asked the number of trees that survived. He did not think he lost any trees.

Mr. Ludecke confirmed with Ms. Greiner that the agricultural exemption must be applied for within one years of the family density exception being granted.

Ms. Greiner explained that the Comprehensive Plan states that parcels that are granted family density exceptions are to be used for single-family residential or agricultural purposes. It does not specify that an agricultural exemption must be applied for and received from the Property Appraiser’s office pursuant to Florida Statutes. That is what is included in the Land Development Regulations (LDRs). However, variances can be granted to the LDRs.

Chairman Schreiner said it is his opinion that Mr. Hage would not have planted the trees unless he was trying to meet some criteria. He felt the decision before this Board is whether Mr. Hage has met the agriculture portion of the LDRs. Ms. Greiner said this Board could make the determination that Mr. Hage had so many pine trees on this property that he used his property for agricultural purposes. In response to Henry Wolsmann, Ms. Greiner said that it could then be sold as a buildable site.

There was no one else in the audience who wished to speak on this case.

When Mr. Eslinger asked why staff had recommended denial, Chairman Schreiner said it did not meet the criteria of the family density exception.

CASE NO.: BOA#106-06-2 AGENDA NO.: 9**OWNER/APPLICANT: Allison Parsons Lehen PAGE NO.: 3****MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to approve the variance request in BOA#106-06-2.**

In response to Ms. Gray, Ms. Greiner explained that this would be a variance to the family density exception so the parcel could be recognized as a buildable site. That would give them the opportunity to sell the parcel. Mr. Eslinger pointed out that the owner has held this property for five years, and they thought they had an agricultural exemption for those five years.

FOR: Fox, Jr., Eslinger, Gray, Bennett, Schreiner, Ludecke**AGAINST: Wolsmann****MOTION CARRIED: 6-1**

CASE NO.:

BOA#110-06-4

AGENDA NO.: 13

OWNERS/APPLICANTS:

Timothy and Debra Gary

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial of the requested variance to allow a setback of seven feet five inches from Biltmore Street and a setback of four feet three inches from Inwood Street, but approval to allow a setback of 15 feet from the right-of-way of Inwood Street. She showed the aerial and site plan from the staff book on the monitor. Staff is recommending that the addition be pushed back. This would allow the addition to meet the front setback and have a 15-foot setback from the right-of-way of Inwood Street.

Tim and Debra Gary were present to represent the case. Ms. Gary said they want to add a two-car garage and to extend their existing family home kitchen on the right side about eight feet. She submitted two photographs as Applicant Exhibit A, two more photographs as Applicant Exhibit B, one photograph as Applicant Exhibit C, and another photograph as Applicant Exhibit D.

When Mary Link Bennett asked if the oak tree would have to be removed if the addition was constructed, Mr. Gary said the tree closest to secondary road would remain. The entrance to the garage would be from Inwood Street.

Ms. Greiner said she was informed by Public Works that they have no plans to widen those roads at this time.

Ms. Gary said five to six cars a day go down the secondary road. When they purchased this residence 18-1/2 years ago, the roads were clay. When the survey was done, they could not get complete measurements of the right-of-way due to the fact that it was a clay road. Because of the pie-shaped lot, they were not given the correct survey when they purchased the property. They originally thought their lot was larger. The survey is correct on the original paperwork from the mortgage company, but the stakes on the property were misplaced. She said their property line is only ten feet from the back of the house. If the new garage were moved back, it would create a hardship for their children and dogs to have a backyard.

Carl Ludecke said he had a problem with a 4-1/2 foot setback from the right-of-way when there are other solutions.

Chairman Schreiner said it appears the oak tree is in the right-of-way.

Ms. Gary said none of their neighbors have a problem with the right-of-way. Although there is significant land, Ms. Greiner pointed out that the land does not belong to the owners; it is right-of-way and cannot be built upon. Ms. Gary said she does not want to build over their property line. Mr. Eslinger said the Garys want to use County property as their buffer.

Chairman Schreiner said that if the addition were moved back flush with the main house, the setbacks would be 15 feet from Biltmore Street and 18 feet from Inwood Street. Mr. Ludecke pointed out that it may be 18 feet at one point, but it decreases as it goes north. This would give them at least 18 feet in the backyard.

Ms. Gary noted in the pictures she submitted that the neighbors' houses are closer to the road in the front than their house is. Chairman Schreiner said that would not be a consideration for this Board.

Ruth Gray suggested the Garys prepare a new site plan taking into account the recommendations made and bring it back to this Board for review. Ms. Greiner said if this Board grants a variance that sets specific setbacks, it would not be necessary for the Garys to come back. They would just have to make the specifics of the variance work.

There was no one else in the audience who wished to speak on this case.

CASE NO.:	BOA#110-06-4	AGENDA NO.:	13
OWNERS/APPLICANTS:	Timothy and Debra Gary	PAGE NO.:	2

MOTION by Carl Ludecke, SECONDED by Henry Wolsmann to approve a variance request in BOA#110-06-4 to allow a structure to be no closer than 12-1/2 feet from the right-of-way of the Inwood and Biltmore Street intersection.

Ms. Gray said she would reluctantly support this motion, but she still felt it should be looser with no specific footage requirement at this time. She would prefer to see a new configuration presented next month. She felt it is possible that there could be some new ways to work this out. Darren Eslinger said that would be fine as long as they stay outside of the 12-1/2 foot setback. In response to Ms. Gray, Mr. Ludecke said he had chosen the 12-1/2 foot setback because that is half of the required setback. Ms. Greiner submitted the site plan from the staff book as County Exhibit A.

FOR: Fox, Jr., Eslinger, Wolsmann, Schreiner, Ludecke

AGAINST: Gray, Bennett

MOTION CARRIED: 5-2

CASE NO.:

BOA#114-06-5

AGENDA NO.: 17

OWNER/APPLICANT:

Jay Johnson III

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial, site plan, and photographs from the staff report on the monitor.

Jay Johnson III, property owner for three years, was present to represent the case.

MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve the variance request in BOA#114-06-5.

FOR:

Fox, Jr., Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

Since this was approved, Mr. Johnson asked if it was necessary for him to go through the process of obtaining permits for the existing structures. Ms. Greiner said that is the only way he can be cleared through Code Enforcement. He must obtain the permits and get final inspections on the structures. Chairman Schreiner explained that the variance would allow the carports to remain in their present location.

Discussion

Anita Greiner, Senior Planner, said the County has received letters for all BOA members except Henry Wolsmann from a citizen in reference to the appeal through Woodlands (BOA#60-06-3). Ms. Greiner had checked with Sanford A. Minkoff, County Attorney, who said the letters could be distributed to the members. Ms. Greiner pointed out that neither Darren Eslinger nor Mr. Wolsmann were present for that case. Kimberly Williams, Assistant County Attorney, advised the members not to speak on this case as there are still several pending motions. Mr. Minkoff will probably give the okay to speak at some point. When Ruth Gray asked the appeal period for this case, Ms. Williams said there have been so many motions filed that she could not give a timeframe for it.

When Hal Murphy asked about BOA#116-06-1, Anita Greiner, Senior Planner, explained that this case was approved under the consent agenda.

Ms. Greiner introduced two staff members from the Customer Services Division who were in attendance at this public hearing: Paul Simmons, Planner, and Karen Chester, Associate Planner.

Adjournment

There being no further business, the meeting was adjourned at 2:40 p.m.

Respectfully submitted,

Sherie Ross
Public Hearing Coordinator

Donald Schreiner
Chairman